

## REMARKS

Upon entry of the above amendments, this application will contain claims 27-46 pending and under consideration. In this submission, claim 27 has been amended and new claims 30-46 have been added.

In the Office Action dated June 29, 2004, claims 27-29 were rejected under 35 USC §112, and claims 27 and 29 were rejected under 35 USC §102(b) over Kuntz (US 4,249,921). For the reasons discussed more fully below, it is believed that the claims are patentable and patentably distinct from the cited reference. Therefore, withdrawal of the rejections and allowance of this application containing claims 27-46 are respectfully requested.

### Rejections under 35 USC §112

Claims 27-29 were rejected for lack of antecedent basis for the phrase "said first terminal part and said second terminal part" found in claim 27. Claim 27 has been amended to recite "a spinal implant defining a longitudinal axis and comprising a first terminal part, an opposite, second terminal part, an upper, first surface and a lower, second surface..." It is believed that this amendment does not add any new matter. Furthermore, it is also believed that this amendment overcomes the rejections under §112. Therefore, withdrawal of the rejections of claims 27-29 is requested.

### Rejections under 35 USC §102

Claims 27 and 29 were rejected under 35 USC §102(b) over Kuntz (US 4,349,921). Claim 27 has been amended to recite that the implant is implanted wherein the first and second terminal parts are positioned interior of the first and second peripheral side walls. Support for this amendment can be found in the application on page 24, lines 3-15, and in Figures 15 and 16. It is believed that this amendment does not add any new matter. Implantation of the implant as claimed provides distinct advantages by minimizing the risk of the implant impinging upon or abrading the neural structures or other structures adjacent the spinal column.

Kuntz discloses an implant that is surgically implanted partly into the disc space as illustrated in Figures 4 and 11-14. The terminal portion of the implant, for example, portion 15

of implant 10, is shown to extend outside the disc space. In contrast, the claimed invention recites a method in which the spinal implant is completely disposed within the disc space as illustrated in Figure 15 and recited in claim 27 as amended. Therefore, it is believed that claim 27, and claims 28 and 29, which depend from claim 27, are patentably distinct from Kuntz. Withdrawal of these rejections is therefore requested.

### New Claims

New claims 30-45 have been added. Support for claims 30-32 can be found in the application on page 15, line 18 through page 19, line 25; page 22, line 17 through page 24, line 25; and Figs. 8 through 16. Support for claim 33 can be found on page 16, lines 4-5, 18-19 and Fig. 8. Support for claim 34 can be found at page 16, lines 20-21; page 21, lines 2-4; and page 23, line 22- page 24, line 2. Support for claim 35 can be found on page 24 lines 9-13. Support for claims 36-38 can be found on page 22 lines 3-16 and Fig. 12. Support for claims 39-41, and 45-46 can be found on page 20, lines 19-20; page 23, lines 14-20; and Figs. 13-14. Support for claim 42 can be found on page 20, lines 1-2. Support for claim 43 can be found on page 18 lines 3-12. Support for claim 44 can be found on page 18, line 24-page 19, line 2 and Figs. 8 and 9A. Consequently, it is believed that the new claims do not add any new matter.

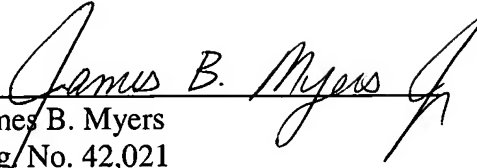
It is also believed that the new claims are patentably distinct over the cited reference. Kuntz does not describe a method of treating a spinal deformity by cutting arcuate recesses in the faces of adjacent end plates.

### Conclusion

For the reasons discussed above, it is believed that the claimed invention is patentably distinct over the cited reference. Therefore, withdrawal of all rejections and allowance of this application containing claims 27-46 is respectfully requested. Additionally, the Examiner is invited to telephone the undersigned attorney if there are any other questions about this

submission or other matters which can be addressed in that fashion.

Respectfully submitted,

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